

AMENDED IN ASSEMBLY APRIL 21, 2005

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 468**

**Introduced by Assembly Member Yee**

February 16, 2005

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An act to amend Section 7576 of the Government Code, relating to special education.

### LEGISLATIVE COUNSEL'S DIGEST

AB 468, as amended, Yee. Interagency responsibilities over handicapped children: mental health assessments.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs.

Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. The law authorizes a local educational agency to refer a pupil suspected of needing mental health services to a community mental health service.

This bill would require the local educational agency to obtain a copy of the community mental health service's ~~standard assessment plan~~ *form for parental consent for assessment*, which shall be provided to it by the community mental health service provider and provide the

parent with an opportunity to consent to the assessment ~~plan~~ in advance, and would make conforming changes, thereby imposing a state-mandated local program. The bill would require the appropriate community mental health service to seek additional written consent to provide ~~follow-up~~ mental health services.

The bill would, *with certain exceptions*, require the local administering agency to complete the assessment for eligible children within 50 calendar days, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7576 of the Government Code is  
2 amended to read:  
3 7576. (a) The State Department of Mental Health, or any  
4 community mental health service, as defined in Section 5602 of  
5 the Welfare and Institutions Code, designated by the State  
6 Department of Mental Health, are responsible for the provision  
7 of mental health services, as defined in regulations by the State  
8 Department of Mental Health, developed in consultation with the  
9 State Department of Education, if required in the individualized  
10 education program of a pupil. A local educational agency is not  
11 required to place a pupil in a more restrictive educational  
12 environment in order for the pupil to receive the mental health  
13 services specified in his or her individualized education program  
14 if the mental health services can be appropriately provided in a  
15 less restrictive setting. It is the intent of the Legislature that the  
16 local educational agency and the community mental health  
17 service vigorously attempt to develop a mutually satisfactory  
18 placement that is acceptable to the parent and addresses the

1 educational and mental health treatment needs of the pupil in a  
2 manner that is cost-effective for both public agencies, subject to  
3 the requirements of state and federal special education law,  
4 including the requirement that the placement be appropriate and  
5 in the least restrictive environment. For purposes of this section,  
6 “parent” is as defined in Section 56028 of the Education Code.

7 (b) A local educational agency, individualized education  
8 program team, or parent may initiate a referral for assessment of  
9 the social and emotional status of a pupil, pursuant to Section  
10 56320 of the Education Code. Based on the results of  
11 assessments completed pursuant to Section 56320 of the  
12 Education Code, an individualized education program team may  
13 refer a pupil who has been determined to be an individual with  
14 exceptional needs as defined in Section 56026 of the Education  
15 Code and who is suspected of needing mental health services to a  
16 community mental health service if the pupil meets all of the  
17 criteria in paragraphs (1) to (5), inclusive. Referral packages shall  
18 include all documentation required in subdivision (c), and shall  
19 be provided immediately to the community mental health service.

20 (1) The pupil has been assessed by school personnel in  
21 accordance with Article 2 (commencing with Section 56320) of  
22 Chapter 4 of Part 30 of the Education Code. Local educational  
23 agencies and community mental health services shall work  
24 collaboratively to ensure that assessments performed prior to  
25 referral are as useful as possible to the community mental health  
26 service in determining the need for mental health services and the  
27 level of services needed.

28 (2) (A) The local educational agency has obtained written  
29 parental consent for the referral of the pupil to the community  
30 mental health service, for the release and exchange of all relevant  
31 information between the local educational agency and the  
32 community mental health service, and for the observation of the  
33 pupil by mental health professionals in an educational setting.

34 (B) The local educational agency shall obtain a copy of the  
35 community mental health service’s ~~standard assessment plan~~  
36 *form for parental consent for assessment*, if any, which shall be  
37 provided to the local educational agency by the community  
38 mental health service provider and shall provide the parent with  
39 an opportunity to provide advance written consent to *the*  
40 *initiation of* the community mental health service’s ~~standard~~

1 ~~assessment plan~~ *assessment process* at the same time that he or  
2 she consents to the referral. *A parent's advance written consent*  
3 *shall have the effect of initiating the assessment period following*  
4 *a five-day period of review of the referral packet for*  
5 *completeness by the community mental health service.*  
6 *Subsequent and more specific consent to assessment procedures*  
7 *or instruments that were not encompassed by the parent's*  
8 *advance written consent may be requested by the community*  
9 *mental health service agency but shall not prolong development*  
10 *of the individual education program as set forth in Section 56344*  
11 *of the Education Code.* If the community mental health service  
12 accepts the referral and agrees to provide the assessment, the  
13 advance written consent shall satisfy the requirements for  
14 parental consent pursuant to subdivision (c) of Section 56321 of  
15 the Education Code, unless the parent revokes his or her consent.

16 (C) ~~Notwithstanding~~ *Except as set forth in subparagraph (D),*  
17 *notwithstanding* any provision of law to the contrary, and to the  
18 extent permitted under federal law, the community mental health  
19 service provider shall complete its assessment of the child within  
20 50 calendar days of the referral. The time period shall not begin  
21 to run until five calendar days after the community mental health  
22 service receives the referral package, including, but not limited  
23 to, the parent's advance written consent to the assessment.  
24 During the five-day period, if the community mental health  
25 service provider determines that the referral package is complete  
26 and that the assessment is necessary, it shall become the  
27 responsible community mental health service provider for the  
28 child. The community mental health service provider shall work  
29 collaboratively with the parents in scheduling assessment  
30 appointments at mutually convenient times and locations so as to  
31 minimize the likelihood of cancellations or of the need to  
32 reschedule.

33 (D) *The community mental health service may request of the*  
34 *referring local education agency, a single 15-day extension of*  
35 *the 50-day assessment time period, if the community mental*  
36 *health service documents five unsuccessful efforts to contact a*  
37 *parent, who has custody of the child, for the purpose of*  
38 *arranging to conduct the assessment and the parent has not*  
39 *responded.*

1 (E) After the assessment pursuant to subparagraph (B) is  
2 completed and it has been determined that the child needs mental  
3 health services, the community mental health service shall seek  
4 additional written consent to provide those mental health services  
5 at the individualized education program team meeting held  
6 pursuant to paragraph (1) of subdivision (d) of Section 7572.

7 (3) The pupil has emotional or behavioral characteristics that  
8 are all of the following:

9 (A) Are observed by qualified educational staff in educational  
10 and other settings, as appropriate.

11 (B) Impede the pupil from benefiting from educational  
12 services.

13 (C) Are significant as indicated by their rate of occurrence and  
14 intensity.

15 (D) Are associated with a condition that cannot be described  
16 solely as a social maladjustment or a temporary adjustment  
17 problem, and cannot be resolved with short-term counseling.

18 (4) As determined using educational assessments, the pupil's  
19 functioning, including cognitive functioning, is at a level  
20 sufficient to enable the pupil to benefit from mental health  
21 services.

22 (5) The local educational agency, pursuant to Section 56331 of  
23 the Education Code, has provided appropriate counseling and  
24 guidance services, psychological services, parent counseling and  
25 training, or social work services to the pupil pursuant to Section  
26 56363 of the Education Code, or behavioral intervention as  
27 specified in Section 56520 of the Education Code, as specified in  
28 the individualized education program and the individualized  
29 education program team has determined that the services do not  
30 meet the educational needs of the pupil, or, in cases where these  
31 services are clearly inadequate or inappropriate to meet the  
32 educational needs of the pupil, the individualized education  
33 program team has documented which of these services were  
34 considered and why they were determined to be inadequate or  
35 inappropriate.

36 (c) If referring a pupil to a community mental health service in  
37 accordance with subdivision (b), the local educational agency or  
38 the individualized education program team shall provide the  
39 following documentation:

1 (1) Copies of the current individualized education program, all  
2 current assessment reports completed by school personnel in all  
3 areas of suspected disabilities pursuant to Article 2 (commencing  
4 with Section 56320) of Chapter 4 of Part 30 of the Education  
5 Code, and other relevant information, including reports  
6 completed by other agencies.

7 (2) A copy of the parent's consent for referral and, at the  
8 parent's option, advance written consent to the community  
9 mental health service's assessment plan, obtained as provided in  
10 paragraph (2) of subdivision (b).

11 (3) A summary of the emotional or behavioral characteristics  
12 of the pupil, including documentation that the pupil meets the  
13 criteria set forth in paragraphs (3) and (4) of subdivision (b).

14 (4) A description of the counseling, psychological, and  
15 guidance services, and other interventions that have been  
16 provided to the pupil, as provided in the individualized education  
17 program of the pupil, including the initiation, duration, and  
18 frequency of these services, or an explanation of the reasons a  
19 service was considered for the pupil and determined to be  
20 inadequate or inappropriate to meet his or her educational needs.

21 (d) Based on preliminary results of assessments performed  
22 pursuant to Section 56320 of the Education Code, a local  
23 educational agency may refer a pupil who has been determined to  
24 be, or is suspected of being, an individual with exceptional needs,  
25 and is suspected of needing mental health services, to a  
26 community mental health service if a pupil meets the criteria in  
27 paragraphs (1) and (2). Referral packages shall include all  
28 documentation required in subdivision (e) and shall be provided  
29 immediately to the community mental health service.

30 (1) The pupil meets the criteria in paragraphs (2) to (4),  
31 inclusive, of subdivision (b).

32 (2) Counseling and guidance services, psychological services,  
33 parent counseling and training, social work services, and  
34 behavioral or other interventions as provided in the  
35 individualized education program of the pupil are clearly  
36 inadequate or inappropriate in meeting his or her educational  
37 needs.

38 (e) If referring a pupil to a community mental health service in  
39 accordance with subdivision (d), the local educational agency  
40 shall provide the following documentation:

1 (1) Results of preliminary assessments to the extent they are  
2 available and other relevant information including reports  
3 completed by other agencies.

4 (2) A copy of the parent's consent obtained as provided in  
5 paragraph (2) of subdivision (b).

6 (3) A summary of the emotional or behavioral characteristics  
7 of the pupil, including documentation that the pupil meets the  
8 criteria in paragraphs (3) and (4) of subdivision (b).

9 (4) Documentation that appropriate related educational and  
10 designated instruction and services have been provided in  
11 accordance with Sections 300.24 and 300.26 of Title 34 of the  
12 Code of Federal Regulations.

13 (5) An explanation as to the reasons that counseling and  
14 guidance services, psychological services, parent counseling and  
15 training, social work services, and behavioral or other  
16 interventions as provided in the individualized education  
17 program of the pupil are clearly inadequate or inappropriate in  
18 meeting his or her educational needs.

19 (f) The procedures set forth in this chapter are not designed for  
20 use in responding to psychiatric emergencies or other situations  
21 requiring immediate response. In these situations, a parent may  
22 seek services from other public programs or private providers, as  
23 appropriate. This subdivision does not change the identification  
24 and referral responsibilities imposed on local educational  
25 agencies under Article 1 (commencing with Section 56300) of  
26 Chapter 4 of Part 30 of the Education Code.

27 (g) Referrals shall be made to the community mental health  
28 service in the county in which the pupil lives. If the pupil has  
29 been placed into residential care from another county, the  
30 community mental health service receiving the referral shall  
31 forward the referral immediately to the community mental health  
32 service of the county of origin, which shall have fiscal and  
33 programmatic responsibility for providing or arranging for  
34 provision of necessary services. In no event shall the procedures  
35 described in this subdivision delay or impede the referral and  
36 assessment process.

37 (h) A county mental health agency does not have fiscal or  
38 legal responsibility for any costs it incurs prior to the approval of  
39 an individualized education program, except for costs associated  
40 with conducting a mental health assessment.

1 SEC. 2. If the Commission on State Mandates determines that  
2 this act contains costs mandated by the state, reimbursement to  
3 local agencies and school districts for those costs shall be made  
4 pursuant to Part 7 (commencing with Section 17500) of Division  
5 4 of Title 2 of the Government Code.

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